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SUPREME COURT OF THE UNITED STATES

October Term, 1941

Nos. 678 and 679

GEORGE E. CRANDALL, Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA.

Petition for Writs of Certiorari to the Superior Court of the Commonwealth of Pennsylvania

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BRIEF OF RESPONDENT

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Opinions Below

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BRIEF OF RESPONDENT

OPINIONS BELOW

The opinion of Walter I. Anderson, Judge of the Court of Common Pleas, is reported in 54 York Legal Record 183. The opinion of the Superior Court of Pennsylvania is reported in 21 Atlantic Reporter (2nd) 232.

COUNTER STATEMENT OF THE CASE

On March 11, 1940, the petitioner, George E. Crandall, was arrested on the charges of unlawfully operating a nursing home, of unlawfully operating a private hospital and of holding himself out as a practitioner of medicine and surgery without first having received a Certficate of Licensure from the Bureau of Medical Education and Licensure of Pennsylvania. He gave bail for his appearance at a preliminary hearing which was held April 12, 1940. After the hearing the defendant was held for the August Sessions of the Quarter Sessions Court and gave bail for his appearance. The defendant was represented by Counsel at the preliminary hearing.

On August 28, 1940, the case was submitted on the three counts to Nos. 42 and 43, August Sessions, 1940. The petitioner, by his Counsel requested a continuance of the case, which request was refused with the direction that the case be called on the following morning, August 30, 1940.

When the case was called for trial on August 30, 1940, at 9:30 A. M., the petitioner appeared without Counsel and the Court offered to appoint two attorneys to represent him, which offer of the Court was refused by the petitioner who stated, "Your Honor, I have to beg to refuse Counsel and exercise my prerogative of acting as my own attorney. I cannot accept Counsel." The case proceeded to trial with the petitioner acting as his own attorney. After hearing the case the Jury returned a verdict of "guilty." On September 3, 1940, the petitioner filed his motion for

a new trial, which motion was refused by the Court after argument had on the said motion.

On January 18, 1941, petitioner was sentenced to sixty days in jail, to pay a fine of $1,000.00 and the cost of prosecution. From this sentence the petitioner appealed to the Superior Court of Pennsylvania, which on June 30, 1941, affirmed petitioner's conviction. A rehearing was denied petitioner on July 18, 1941, and the Supreme Court of Pennsylvania on September 24, 1941, refused a petition for appeal.

SUMMARY OF ARGUMENT

I.

The petitioner has been afforded due process of law under the Constitution of the United States, and has had a fair trial in every respect.

II.

The opinions of the Courts of Pennsylvania are in accord with the applicable decisions of the Supreme Court of the United States.

ARGUMENT
INTRODUCTION

The allegations of the petition for writs of certiorari filed in this case are so argumentative and confused with questions of fact and law that it is difficult for respondent to determine just on what basis the petitioner seeks to have the writs issued.

All of the allegations of fact in the petition filed in this court contained in paragraphs one to seven, inclusive, are obviously immaterial, impertinent, and irrelevant to any issue involved in this proceeding. Petitioner was given ample opportunity to present his case before a jury, who found the facts to be contrary to his allegations. No question was raised by the petitioner as to the sufficiency of the evidence to sustain the convictions, when he appealed to the Superior Court of Pennsylvania.

Comm. v. Crandall, 21 A. 2nd, 232, 234.

The Superior Court, however, reviewed the entire record, including the evidence, and determined it to be sufficient to justify the verdict and judgment

I. The petitioner has not been denied any rights under the Constitution of the U. S. or its Amendments.

He complains that the Court below erred in not granting his request for a continuance. The record discloses that the defendant was arrested on March 11, 1940, and that a preliminary hearing was held on April 12, 1940, at the conclusion of which he gave bail for his appearance at the August Sessions of the

Quarter Sessions Court. Thus it is seen that the petitioner had over five months to prepare his case.

The Superior Court of Pennsylvania has said in **Commonwealth vs. Rouchie, et al., 135 Pa. Super. 594, 600**, that the all important question is the time allowed defendant himself, and not the interval between appointment of counsel and the date of the trial.

Commonwealth vs. Meyers, 290 Pa. 573, 578;

Commonwealth vs. Lockard, 325 Pa. 56, 62.

In the case of the **Commonwealth vs. Rouchie, supra**, the information was filed against the defendant on December 30, 1938, and a preliminary hearing was held on January 25, 1939. The indictment was returned February 9, 1939, and a motion for continuance filed February 14, 1939, which was refused the same day and the trial began February 15, 1939.

In the instant case the petitioner had even more time than in the case of **Commonwealth vs. Rouchie, et al., supra.** And in this, as in that case, there was no motion supported by affidavit showing any facts warranting a continuance nor was there any evidence to show that five months was not sufficient time to prepare a defense.

An application for a continuance is addressed to the sound discretion of the trial judge, and his action will not be disturbed unless that discretion has been abused.

Commonwealth vs. Rouchie, et al., 135 Pa. Super. 594, 599;

Commonwealth vs. Deni, 317 Pa. 289, 293;

Commonwealth vs. Meyers, 290 Pa. 573;

Commonwealth vs. Blakely, 274 Pa. 100, 104;

Commonwealth vs. Zec, 262 Pa. 251, 255;

Commonwealth vs. Scouton, 20 Pa. Super. 503, 517.

A defendant has no natural or inalienable right to a continuance.

Commonwealth vs. Meyers, 290 Pa. 573;

Commonwealth vs. Blakely, 274 Pa. 100, 104.

The petitioner takes the position that he was not formally arraigned. This case is not one triable solely in the Oyer and Terminer and therefore, arraignment was not necessary.

Act of May 15, 1895, P. L. 71:

Commonwealth vs. Ferguson, 44 Pa. Super. 626, 630.

The Commonwealth contends that there was no denial to petitioner of the constitutional right to be heard by his counsel because petitioner WAIVED this right.

The waiver was made in open Court, on the record, and petitioner was fully aware of the effect of his voluntary act. (See Record page 19a).

When petitioner appeared before the Court on the

day appointed for trial without counsel, the trial Court appointed two members of the Bar to assist and represent him. (See Record page 19a).

Petitioner however, refused this offer of assistance, stating as follows:

> "Your Honor, I have to beg to refuse counsel and exercise my prerogative of acting as my own attorney. I cannot accept counsel." (Record page 19a).

It is difficult to see how petitioner could have more clearly evidenced his intention of waiving his right to counsel.

The Supreme Court of the United States has defined a waiver as follows:

> "A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused."

Johnson vs. Zerbst, 304 U. S. 458, 465.

That a defendant in a criminal case may waive his right to the assistance of counsel is well settled, and whether or not the accused has actually waived his right is a matter for the trial Court, whose decision in the matter will not be reversed except for abuse of discretion.

Commonwealth, ex rel. Shultz, vs. Smith, 139 Pa. Super. 357;

State vs. Townley, 149 Minn. 5; certiorari denied, 257 U. S. 263.

The Commonwealth submits that the learned trial judge did not abuse his discretion. The relevant circumstances of this case manifest that the defendant was fully aware of his rights and deliberately chose to waive them. He was arrested over five months prior to his trial, and was freed on bail for action of the August Term of the Court after a preliminary hearing at which he had counsel. (See Record pages 5a and 13a). He knew for over five months that his case was to be before the Court in the August Sessions. Petitioner is an intelligent individual, a graduate of the Osteopathic College, and for years maintained and presided over an institution for the care of the sick. The charges, he knew, grew out of and were concerned with this very institution.

The Commonwealth had procured the presence of witnesses, some from distant sections of the State, for the term of Court for which defendant was held by the Alderman as a result of the preliminary hearing.

The petitioner had an equal opportunity to prepare his case on the basis that it would come up for trial at the August Term of Court. He had Counsel other than John P. Connelly, Esquire, at his preliminary hearing on April 12, 1941, so he cannot later complain that he should be entitled to the services of one particular attorney. The fallacy of petitioner's argument on this account is pointed out by Judge Rhodes of the Superior Court of Pennsylvania:

> "Generally, the question in such cases is the time which the defendant himself has been

allowed, and not whether the time between the date an attorney is engaged by the accused and the date set for trial is sufficient. Otherwise all that a defendant would have to do in order to secure unending delay would be to change counsel on the eve of the trial."

COMM. V. CRANDALL, 21 Atl. 2nd, 232, 234.

It is therefore respectfully submitted that petitioner's statements to your Honorable Court that the courts of Pennsylvania have denied him any rights whatsoever to which he is entitled under the laws of Pennsylvania or the Constitution of the United States or the Amendments are wholly unsupported by the record and entirely without merit.

II. The opinion of the Court of Quarter Sessions of York County and of the Superior Court of Pennsylvania are wholly in accord with the applicable decisions of the Supreme Court of the United States.

The policy of this Court with respect to writs of certiorari is set forth in rule 38(5)(a).

It is submitted that the record of this case and the petition filed in this case of themselves clearly show that the petitioner has no special or important reasons for the granting of the writs. The cases previously cited are indicative of the fact that the federal questions of substance purported to be raised here have been well settled law for some time. Surely no serious argument can be made on behalf of petitioner that this case has been decided in a way not in accord with the applicable decisions of this court.

It is therefore respectfully submitted that petitioner has had his day in court. His constitutional

rights as a citizen have been carefully guarded, and all the objections which he and his counsel could possibly think of to raise have been patiently and carefully considered and passed upon by the York County Court on a motion for new trial, by the Superior Court of Pennsylvania on appeal and petition for reargument, and by the Supreme Court of Pennsylvania in refusing an appeal to that body.

It is respectfully submitted, therefore, that the prayer of the petition for the writs of certiorari in these cases is without merit and should be denied.

Respectfully submitted,

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HAROLD B. RUDISILL,
Assistant District Attorney.

HERBERT B. COHEN, Esquire,
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